

SUNSHINE REFORM TASK FORCE AMENDED MEETING MINUTES

**Thursday, January 18, 2007
6:00pm – 9:00pm**

City Hall W-118

Present: Ed Rast, Strong Neighborhoods Initiative PAC; Ken Podgorssek, United Neighborhoods of SCC; Virginia Holtz, Willow Glen Neighborhood Assoc.; Joan Rivas-Cosby, Five Wounds/Brookwood Terrace Neighborhood Advisory Committee; Bobbie Fischler, League of Women Voters; Dan Pulcrano, Silicon Valley Leadership Group; Bob Brownstein, South Bay Labor Council; Susan Goldberg, San José Mercury News; Nanci Williams, San José/Silicon Valley Chamber of Commerce; Edward Davis, Orrick Law Firm (Legal Counsel); Mary Ann Ruiz, Parks and Recreation Commission; Karl Hoffower, Citizens Commission on Human Rights; Margie Matthews, Former Councilmember; Dave Zenker, Falls Creek Neighborhood Association.

Absent: Brenda Otey, At Large-Representative; Judy Nadler, Markkula Center for Applied Ethics.

Staff: Lee Price, City Clerk; Dottie Disher, Office of the City Clerk; Lisa Herrick, Senior Deputy City Attorney; Dan McFadden, Interim Deputy City Manager; Eva Terrazas, Office of the City Manager/Redevelopment Agency; Sheila Tucker, Office of the City Manager; Tom Manheim, Office of the City Manager.

I. Approval of the January 4, 2007 Meeting Minutes

Upon a motion by Virginia Holtz, seconded by Ken Podgorssek, the January 4, 2007, minutes were approved with two abstentions, Task Force members Dave Zenker and Margie Matthews (absent 1/4/07).

II. Comments from the Chair

Chair Rast declared that the January 18th meeting will concentrate on Closed Session and a discussion on the format of Public Meetings.

III. Review of Meeting Material

Staff provided an overview of the documents for the meeting. In addition, the Task Force introduced Rick Doyle, City Attorney; Alex Gurza, Director of Employee Relations; Paul Krutko, Director of Economic Development; and Harry Mavrogenes, Redevelopment Agency Executive Director.

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IV. Discussion on Closed Session Revisions

A. Referrals to Legal Counsel

Ed Davis, Legal Counsel to the SRTF, reviewed and summarized the document submitted by Task Force member Susan Goldberg on Closed Session (1/11/07) into five categories:

1. Agenda Requirements i.e., what will be discussed in Closed Session.
Ed Davis questioned whether the requirement of what's to be on the agenda is comprehensive enough and noted Susan Goldberg's proposal seemed reasonable but the City may have different views on the practicality. Staff will evaluate Susan Goldberg's suggestions and work with Ed Davis to make further recommendations for agenda requirements. Note, the SRTF must return and discuss the length of time to retain recordings.
2. Who can convene a closed meeting i.e., restrict the number of bodies that can go into Closed Session?
Staff will add the Arena Authority to the list of bodies that can conduct closed session, provide a rationale that describes why each of the eight bodies need to conduct closed session, and codify the list in the Sunshine Ordinance.
3. Topics for closure i.e., for those bodies where sessions can be closed, limit to specific topics.
Ed Davis clarified the intent was to limit the topics to the same topics as permitted in the Brown Act and that it was not counsel's intent to go below the Brown Act, nor would it be legal to do so.
4. Specific Topics (4 elements) – Discipline/Personnel, Real Estate, Labor, Litigation
 - a. Discipline/Personnel i.e., report disciplinary actions.
 - (i) Bob Brownstein suggested viewing disciplinary action in two categories: 1) information is presented and disciplinary action is taken, and 2) information is presented but charges are not substantiated. Upon a motion by Bob Brownstein, seconded by Virginia Holtz, the Task Force agreed to the following recommendations with regard to reporting disciplinary actions:

Recommendation #1 – Return with language to require a report out, when information is presented and disciplinary action is taken, including a discussion on the right to privacy and the extent that the City is protected from liability. Return with legal research about the notion of “insulation” put forward by Ed Davis i.e., make staff, prospective employees aware there is no expectation of privacy and require to agree.

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Recommendation #2 – Defer action until staff returns with objective standards to define “substantiated” or “well founded” and discussion of legal liability and due process issues.

Note recommendation relate solely to the disciplinary requirements of Council Appointees.

(ii) Performance Evaluations

The SRTF agreed that performance evaluations would not be disclosed in open session after being conducted in closed session.

- b. Real estate—report out proposed deals when negotiations concluded, but before action is taken.

The SRTF recommended:

(i) Clarifying that closed sessions, related to real estate negotiations, may not address *any* subjects other than instructions from the City Council to its negotiators regarding the price and terms of payment with an understanding that price includes a discussion on potential use of property.

(ii) Requiring that policy bodies identify the properties at issue *and any development plans regarding the property* in open session, so that proposed development of property being considered for purchase or sale cannot be discussed in closed session (within the constraints of CEQA).

(iii) Requiring public disclosure of all proposed agreements, after the agreements are negotiated, but *before* the deal is approved in a public vote. Codify 10 day requirement for purchase <1M, 14 days for purchase >1M.

- c. Labor negotiations

The SRTF did not discuss this topic.

- d. Litigation

The SRTF did not discuss this topic.

5. Certification (2 elements): 1) How it works, and 2) How it is enforced?

Preliminary discussions included:

- a. Ed Davis did not support litigation as a practical measure to challenge non-disclosure.
- b. Susan Goldberg proposed a Task Force to hear appeals.
- c. Several Task Force members and staff noted establishing a Task Force to hear appeals would highly politicize the appointment process.

Action Item: Legal Counsel, Ed Davis and Lisa Herrick, will re-draft the Closed Session provisions and draw further attention to items 4 and 5.

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A discussion ensued on public employee performance evaluations.

Public Comment: James Chadwick commented that the City Charter was obscure with respect to the City Manager, but for Council Appointees, except the City Clerk, his understanding was that closed session could be conducted to discuss a specific individual within an office (i.e. City Attorney's Office,) and not just to discuss Council Appointees.

V. Review of February 24, 2007, SRTF Meeting Agenda Regarding Police Records

1. The expert panel will consist of a representative from each of the following: ACLU, Legal Foundation, Police Auditor, NAACP, San José Police Department, and District Attorney's Office. A suggestion was made to include a media expert and the City Attorney in this panel.
2. Task Force member Susan Goldberg asked that the Mercury News attorney also be included on the panel due to their extensive experience requesting public records. City staff also suggested that the Police Officer's Association be represented by their legal counsel.
3. Task Force member Ken Podgorsek volunteered to assist in communicating the February 24, 2007 meeting to neighborhood groups.
4. Panel experts must provide a 1-page description of their specific concerns to the Task Force; deadline for submittal is February 15, 2007.
5. Staff will continue to work on an informational document concerning police records. Staff understands the Police Department is working on a comparison that benchmarks two similar-sized cities (San Francisco and Oakland).

VI. Update on Program Budget to Implement Sunshine Ordinance

Staff noted preliminary discussions were underway on a budget proposal for FY06-07 to implement Sunshine reforms.

VII. Discussion and Approval of Draft Schedule for Completing Phase 1 and Phase 2 of the Sunshine Ordinance

The Task Force discussed the pros and cons of presenting recommendations in two phases. The draft schedule projects a presentation on Phase I of the Sunshine Ordinance (*Public Meetings, Closed Sessions, Public information*) to the City Council on March 20, 2007, and Phase 2 (*Public Records, Technology, and Enforcement*) during the first week of June 2007. Further discussion on the item was deferred to the February 1, 2007 Task Force meeting.

VIII. Upcoming Agenda and Work Plan

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- A. The Task Force will discuss Public Meetings on February 1, 2007, as stated in the draft schedule.
- B. The Reed Reform Referrals have been agendaized for the evening session of the February 6, 2007, City Council Meeting and will be the first item discussed beginning at 7:00 p.m.

XI. Public Comment

No additional public comment.

Upon a motion by Ken Podgorssek, seconded by Joan-Rivas Cosby, the Task Force adjourned the January 18, 2007, meeting at 8:50 p.m.